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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 66/145, the General Assembly requested the Secretary-General to report to the Assembly at its sixty seventh session on the universal realization of the right of peoples to self-determination. The present report is submitted in accordance with that request.

The report outlines the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination, and provides a summary of the developments relating to the consideration by the Human Rights Council of the subject matter, including by its special procedures.

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I. Introduction

1. The General Assembly, in its resolution 66/145, adopted on 19 December 2011, reaffirmed the importance of the universal realization of the right of peoples to self-determination for the effective guarantee and observance of human rights. The Assembly welcomed the progressive exercise of the right to self-determination by peoples under colonial, foreign or alien occupation and their emergence into sovereign statehood and independence.

2. The present report is submitted in accordance with paragraph 5 of resolution 66/145, in which the Assembly requested the Human Rights Council to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and with paragraph 6, in which the Assembly requested the Secretary-General to report on this question at its sixty seventh session.

3. The report provides a summary of the main developments relating to the realization of the right to self-determination within the framework of the activities of the United Nations human rights mechanisms during the period under review. This includes recent concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights based on their consideration of the periodic reports submitted by the States parties to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, in respect of the implementation of the right to self-determination guaranteed in article 1 of the two Covenants. It also incorporates the consideration of the question by the Human Rights Council, including observations made in reports submitted to the Council by the Special Rapporteur on the Rights of Indigenous Peoples and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

II. Human Rights Committee and Committee on Economic, Social and Cultural Rights

4. Article 1, paragraph 1, of the International Covenant on Civil and Political Rights, and article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights affirm the right of all peoples to self-determination. Article 1, paragraph 2, of the two Covenants affirms a particular aspect of the economic content of this right, namely the right of peoples, for their own ends, to "freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". Article 1, paragraph 3, of the International Covenant on Civil and Political Rights and article 1, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights impose upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the Charter of the United Nations, in particular with article 1, paragraph 2.

5. The right to self-determination has been addressed by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in their

consideration of States parties' periodic reports submitted respectively under article 40 of the International Covenant on Civil and Political Rights and articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. The relevant concluding observations adopted during the period under review are summarized below.

A. Concluding observations by the Human Rights Committee

6. During the reporting period, the Human Rights Committee addressed several issues related to the right to self-determination in Ethiopia and Guatemala.

7. In its concluding observations on Ethiopia, adopted on 25 July 2011, the Committee noted the recognition of the rights of ethnic and linguistic communities to self-determination at the level of the regional State according to the "ethnic federalism" established by the Constitution (see CCPR/E/ETH/1, paras. 4-14). However, the Committee was concerned about the lack of recognition and participation in public life of the ethnic and linguistic minorities living outside their designated "ethnic regions". The Human Rights Committee recommended that the State party recognize the existence of the various ethnic and linguistic minorities in each regional State and ensure their adequate political representation and participation at regional State and federal levels (see CCPR/C/ETH/CO/1, para. 26).

8. In its concluding observations on Guatemala, adopted on 28 March 2012, the Committee recognized the measures taken by the State party, such as the 2009-2012 Programme for the Development of Indigenous Peoples and the constitutional reforms of 2001, which are designed to ensure respect for indigenous rights, but regretted that indigenous peoples are not effectively consulted by the State party during decision-making processes that affect their rights. The Committee called on Guatemala to comply with its international commitment to carry out prior and informed consultations with indigenous peoples for all decisions relating to projects that affect their rights, in accordance with article 27 of the Covenant. The Committee also stated that the State party should recognize and take due account of all decisions taken by indigenous peoples during such consultations (see CCPR/C/GTM/CO3, para. 27).

B. Concluding observations by the Committee on Economic, Social and Cultural Rights

9. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination in its concluding observations on Argentina, New Zealand and Peru with respect to the rights of indigenous peoples.

10. In its concluding observations on Argentina, adopted on 2 December 2011, the Committee noted with concern that Act No. 26160 (extended by Act No. 26554), regarding the possession and ownership of lands traditionally occupied by indigenous peoples, has not been fully implemented. It also expressed concern about delays in providing indigenous communities with ownership titles to such lands or territories. In this connection, the Committee urged the State party to ensure the full and coordinated implementation of Act No. 26160/26554 both at the federal and provincial levels. The Committee recommended that the State party finalize the

process of demarcation in all provinces, as foreseen by the Constitution and existing laws, and that it expedite the granting of communal title of land to indigenous communities (see E/C.12/ARG/CO/3, para. 8).

11. The Committee also expressed concern about the persisting threats, displacements and violent evictions of indigenous peoples from their traditional lands in numerous provinces. It also regretted the shortcomings in consultation processes with affected indigenous communities, which in some cases have led to the exploitation of natural resources in the territories traditionally occupied or used by them without their free, prior and informed consent and without just and fair compensation paid to them, in violation of the Constitution (art. 75) and International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Committee was particularly concerned by the negative consequences of lithium exploitation in Salinas Grandes (Salta and Jujuy provinces) on the environment, access to water, way of life and subsistence of indigenous communities. In this connection, the Committee recommended that the State party undertake the necessary measures to stop violations of the rights of indigenous peoples and that it hold accountable those responsible for such unlawful acts. In this regard, it urged the State party to always enter into effective consultations with indigenous communities before granting concessions for the economic exploitation of the lands and territories traditionally occupied or used by them to State-owned companies or third parties, fulfilling the obligation to obtain the free, prior and informed consent of those who are affected by the aforementioned economic activities. The Committee also recommended that the State party guarantee that in no case would such exploitation violate the rights recognized in the Covenant and that just and fair compensation would be granted to indigenous communities. The Committee also called upon the State party to ensure the protection of indigenous communities during the implementation of mining exploration and exploitation projects. With regard to Salinas Grandes, the Committee urged the State party to comply with the decision of the Supreme Court. The Committee recalled in this context its statement on obligations of State parties regarding the corporate sector and economic, social and cultural rights (see E/C.12/2011/1 and E/C.12/ARG/CO/3, para. 9).

12. Finally, the Committee expressed concern about cases in which the increased use of chemical pesticides and transgenic soya seeds in regions traditionally inhabited or used by indigenous communities has negatively affected these communities. The Committee was worried that these communities find it increasingly difficult to apply their traditional farming methods; consequently, this may become an important obstacle to the access to safe, adequate and affordable food. The Committee also noted with concern the scale of deforestation that, in spite of Act No. 2633 on forest protection, has forced indigenous peoples to leave territories traditionally occupied or used by them. The Committee is further concerned that these activities are often carried out without effective prior consultation with the affected groups of the population. The Committee urged the State party to ensure that the means of subsistence of indigenous communities and their enjoyment of economic, social and cultural rights are effectively protected, and to develop institutional and procedural guarantees to ensure the effective participation of indigenous communities in decision-making on issues that affect them. The Committee also recommended that the State party ensure the full implementation of Act No. 2633 and other legislation regarding the protection of

non-renewable resources of the State party with a view to combating deforestation (see E/C.12/ARG/CO/E, para. 10).

13. In its concluding observations on New Zealand, adopted on 18 May 2012, the Committee expressed concern that the State party does not give sufficient protection to the inalienable rights of indigenous people to their lands, territories, waters and maritime areas, and other resources, as manifested by the fact that Maori free, prior and informed consent on the use and exploitation of these resources has not always been respected. The Committee called on the State party to ensure that the inalienable rights of Maori to their lands, territories, waters and maritime areas and other resources. as well as respect of the free, prior and informed consent of Maori on any decisions affecting their use, are firmly incorporated in the State party's legislation and duly implemented. The Committee also urged the State party to take the necessary measures to guarantee Maori right to redress for violations of these rights, including through the implementation of the recommendations of Waitangi Tribunal's proceedings, and to ensure that Maori receive proper compensation and enjoy tangible benefits from the exploitation of their resources (see E/C.12/NZL/CO/3, para. 11).

14. In its concluding observations on Peru, adopted on 18 May 2012, the Committee expressed concern that effective consultation and prior informed consent of indigenous peoples is not systematically sought in decision-making processes relating to the exploitation of natural resources in their traditional territories. The Committee recommended that the State party ensure that the implementation of the National Environmental Policy, Section 5, on mining and energy, as well as Act No. 29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, involves effective consultation and prior consent of indigenous peoples relating to the exploitation of natural resources in their traditional territories (see E/C.12/PER/CO/2-4, para. 23).

III. Human Rights Council

A. Resolutions

15. At its nineteenth session, held from 27 February to 23 March 2012, the Human Rights Council considered the question of the realization of the right of peoples to self-determination under agenda item 7 and adopted resolution 19/15 on the right of the Palestinian people to self-determination. The Council reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State. The Human Rights Council urged all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination.

B. Special Procedures

16. The Special Rapporteur on the rights of indigenous peoples, James Anaya, presented his reports to the Human Rights Council at its eighteenth session on the situation of the Sami people in the Sápmi region of Norway, Sweden and Finland

(see A/HRC/18/35/Add.2), on the situation of indigenous peoples in the Republic of Congo (see A/HRC/18/35/Add. 5) and on the situation of Kanak people in New Caledonia (see A/HRC/18/35/Add.6).

17. The Special Rapporteur paid particular attention to Sami self-determination at the national level, as exercised through the Sami parliaments, and the rights of Sami to their lands, territories and resources He noted that while the laws and the policies of Nordic countries with respect to the Sami people are relatively advanced, there are still ongoing barriers to the full realization of the right of Sami people to self-determination, both at the cross-border and national levels.

18. The Special Rapporteur also stated that, despite having endured a history that divided their territory and people among four States, the Sami people have made remarkable efforts to maintain and strengthen bonds across the national boundaries and to advance their interests as one people. Several cross-border institutions have been formed to represent the interests of Sami people throughout the Sápmi region and play an important role in developing a Sami policy that applies beyond the State framework. The Special Rapporteur noted with satisfaction that Nordic Governments, for the most part, have not hindered cross-border Sami relations and at times have facilitated it.

19. Finally, the Special Rapporteur noted the important work that has been done towards the adoption of a Nordic Sami Convention and welcomed the commitment on the part of the Nordic States and the Sami parliaments to recommence negotiations in 2011 towards the adoption of the Convention.

20. Among his recommendations, the Special Rapporteur appealed to the Nordic States to continue and enhance their efforts to implement the right of the Sami people to self-determination and to more genuinely influence decision-making in areas of concern to them. Effective consultation arrangements that seek to ensure free, prior and informed consent about decisions directly affecting the Sami may assist to achieve this end. The Special Rapporteur recommended that the Nordic States introduce reforms as necessary to ensure that the Sami parliaments, as the highest representative of the Sami people, have greater independence from State institutions and authorities. Correspondingly, Nordic States should provide the Sami parliaments with funding sufficient for them to be able to effectively exercise their self-governance functions.

21. The Special Rapporteur highlighted that for the Sami people, as with other indigenous peoples throughout the world, securing rights over land and natural resources is fundamental to their self-determination, and it is considered a prerequisite for the Sami people to be able to continue to exist as a distinct people. In this regard, the Special Rapporteur, while recognizing the efforts of the Nordic Governments to advance the rights of Sami people to their lands, territories and resources, urged them to redouble their efforts in order to guarantee the Sami people a sustainable basis for their economic, social and cultural development.

22. Following his mission to the Republic of Congo, the Special Rapporteur on the Rights of Indigenous Peoples presented his report to the Human Rights Council at its eighteenth session on the situation of indigenous peoples in the country (see A/HRC/18/35/Add.5). Enhancing participation in decision-making is considered by the Special Rapporteur to be essential if all aspects of the initiatives being taken to advance the rights of indigenous peoples in the Congo are to be successfully

implemented. This requires, in accordance with the United Nations Declaration of the Rights of Indigenous Peoples, building greater opportunities for indigenous peoples to participate in decision-making processes of State institutions at all levels, as well as recognition, strengthening and accommodation of indigenous peoples own decision-making institutions and authority. Indigenous participation in various dimensions is instrumental to the right of self-determination and the empowerment of indigenous peoples to control their own destinies under conditions of equality. Advancing indigenous participation in decision-making also requires dedicated efforts in confronting and overcoming barriers to indigenous peoples and individuals being part of the State's political processes and governing institutions. Measures should be taken to ensure full and adequate opportunities for indigenous participation in legislative processes and government institutions at all levels. All efforts to develop programmes appropriate to the Congolese context should be done in consultation with indigenous peoples themselves.

23. Following his mission to New Caledonia, the Special Rapporteur stated that the system of customary justice of the Kanak people represents an important part of the exercise of self-governance and self-determination. The Special Rapporteur was pleased to learn that under French law decisions made in the customary system as to civil matters are generally respected by the State legal system. He recommended, however, that continued efforts be made to enhance the control of Kanak people over their communities, territories and natural resources, including providing effective recognition of their own institutions of authority and customary laws, to the extent compatible with universal human rights standards. Regarding Kanak participation in the political arena and governance as a fundamental aspect of the right to self-determination for indigenous peoples, the Special Rapporteur noted that even though the Nouméa Accord affirms an important level of recognition of Kanak participation in national decision-making, more needs to be done to enhance Kanak participation in decision-making at the territorial level (see A/HRC/18/35/Add.6). On lands and resources, the Special Rapporteur recognized the achievements of the Rural Development and Land Planning Agency in returning significant areas of land to Kanak ownership and control. He also recommended that France and the Government of New Caledonia make all necessary efforts to facilitate the resolution of outstanding claims and ensure that all legitimate Kanak land claims can proceed to a conclusion.

24. In his reported submitted to the twentieth session of the Human Rights Council, following his mission to assess, inter alia, the efforts to realize the Palestinian right of self-determination (see A/HRC/20/32), the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, recalled that it is beyond controversy that the Palestinian people enjoy an inalienable right of self-determination that is confirmed by article 1 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and as set forth in the Charter of the United Nations. He also recalled that the General Assembly and the Security Council have both confirmed that the right of self-determination is possessed by the Palestinian people, and should be realized though a sustainable solution to the conflict and that the International Court of Justice viewed the construction of the separation wall on occupied Palestinian territory as a violation of the right of self-determination belonging to the Palestinian people (see A/HRC/20/32).

25. The Special Rapporteur expressed concerns regarding the issue of the settlements in the occupied Palestinian territories. He also expressed his continued concern about the human rights and humanitarian consequences of the illegal blockade of the Gaza Strip by the occupying Power and the denial of the right to self-determination inherent in the continuing occupation of Gaza.

IV. Conclusion

26. **The right of self-determination is enshrined in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. During the reporting period, the human rights treaty bodies, and the Human Rights Council, including Special Procedures mandate holders, have continued to address issues related to the realization of this right.**